Privy Council Appeal No. 68 of 1945

Canada and Dominion Sugar Company, Limited - - *Appellants*

v.

Canadian National (West Indies) Steamships, Limited - *Respondents*

FROM

THE SUPREME COURT OF CANADA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 24TH OCTOBER, 1946

Present at the Hearing:

LORD THANKERTON
LORD MACMILLAN
LORD WRIGHT
LORD PORTER
LORD UTHWATT

[*Delivered by* LORD WRIGHT]

The appellants claimed in the action as holders of a bill of lading in respect of a quantity of sugar shipped at Demerara on the respondents' steamship Colborne for delivery at Montreal. In due course the appellants, who had purchased the sugar on c.i.f. terms, took up the bill of lading against payment of 95 per cent. of the purchase price when it was presented to them in accordance with the terms of the contract and thereupon became owners of the sugar and duly thereafter paid the balance of the price. The sugar was found to be damaged. In the action it was alleged, in addition to the claim on estoppel, that the damage had been sustained during the voyage and that the respondents as shipowners were liable either for failure to carry with due care or for bad stowage. On the appeal before this Board the primary issue on which the appellants claimed to succeed was on estoppel based upon the terms of the bill of lading which, it was contended, contained an unqualified statement that the sugar had been received in apparent good order and condition for shipment on the Colborne; the appellants, it was said, accepted the bill of lading on presentation at Montreal and paid for the sugar on the faith of that statement and were entitled to recover accordingly for the resulting loss. The trial judge upheld the claim, but the Supreme Court of Canada dismissed it on the ground that the statement of good order and condition was qualified by the other terms of the bill of lading.

The two further contentions of fact on which the appellants originally relied, namely, want of due care on the voyage and bad stowage, did not succeed either before the Judge or before the Supreme Court and need not here be further considered. Their Lordships agree that the contentions failed.

The bill of lading dated at Georgetown, B.G., on the 13th June, 1938, and signed by the agents of the shipowners (the respondents) was a " received for shipment " not a " shipped " bill of lading. The loading of the sugar in question was completed on the 13th June and the ship's receipt was signed on that date. It is not clearly established whether the signing of the bill of lading was before or after the actual completion of the loading, but as the bill of lading bore on its face an indorsement " Signed

under guarantee to produce ship's clean receipt " it would seem reasonable to infer that the ship's receipt had not reached the agents' office when they signed the bill. As will be shown later, this particular point is not material in the final stage of the argument. Evidence was given and not questioned that there was a practice at the port to issue bills of lading before the completion of the loading and the issue of the mate's receipt in order to facilitate the shippers' business arrangements by enabling them to catch an earlier mail for the port of destination so that the document could be presented to the buyer for acceptance and payment before the carrying vessel's arrival. In the present case the Colborne did not arrive until the 3rd July, 1938, but the bill of lading was taken up against payment at Montreal on the 29th June, 1938.

It was not disputed that the sugar which had been lying for some time at the wharf at Georgetown had suffered some damage before shipment. From this resulted the damage found on arrival at Montreal. The voyage had been made under favourable weather conditions and there was nothing to account for the wet condition of part of the cargo, except exposure during the rainy season while waiting for shipment. The ship's receipt signed on the 13th June, 1938, by the Chief Tally Clerk acting for Booker Bros. McConnell and Co., Ltd., who were the shippers and sellers, and by the same company as agents for the shipowners, had the notation " Many bags stained, torn and resewn." This state of things would be sufficient to explain the damage found at Montreal on unloading, though that damage would not involve an inference of bad stowage, as on the evidence the Supreme Court, rightly, in their Lordships' judgment, found.

The third point, estoppel, depends primarily on whether the bill of lading contained an unqualified statement that the sugar was received by the ship " in apparent good order and condition." This issue has been strenuously argued from several different aspects. Mr. Devlin has contended that the statement in the first line of the bill of lading " Received in apparent good order and condition " governs the whole document: that the stamped clause or indorsement which appears on the margin of the bill, " signed under guarantee to produce ship's clean receipt," was not sufficiently clear to qualify these governing words which would at most merely give rise to an independent claim for breach of the guarantee, should it be broken. Clause 27 was also said to have no application in the facts of the case. Reliance was also placed on certain articles in the Carriage of Goods by Sea Ordinance of British Guiana, Revised Statutes of British Guiana, 1930, c. 123, which it has been agreed is the same as the Canadian Water Carriage of Goods Act, 1936.

The crucial question is what is the true construction of the bill of lading in regard to the matters relevant to this case. The issue is here between the shipowners and the indorsees of the bill and has to be decided as between these parties on the basis of what appeared on the face of the bill when it was presented at Montreal to the respondents. Their rights and liabilities would not in a case like this be affected by what happened at the port of shipment as between the shippers and the shipowners, except in so far as appeared from the bill of lading. Authority for that proposition (if authority be needed at this time of day) is afforded by *Evans* v. *Webster* (1928) 34 Com. Cas. 172, where it was held that an innocent indorsee for value of a bill of lading is entitled to act upon the statements contained in the bill of lading unless he has at the material time clear and definite knowledge from other sources that the statements in the bill are untrue. Any other view would affect the value of a bill of lading as a document of title on the faith of which shipowners and indorsees deal. If the statement at the head of the bill, " Received in good order and condition," had stood by itself, the bill would have been a " clean " bill of lading, an expression which means at least in a context like this that there was no clause or notation modifying or qualifying the statement as to the condition of the goods. But the bill did in fact on its face contain the qualifying words, " Signed under guarantee to produce ship's clean receipt ": that

was a stamped clause clear and obvious on the face of the document and reasonably conveying to any business man that if the ship's receipt was not clean the statement in the bill of lading as to apparent order and condition could not be taken to be unqualified. If the ship's receipt was not clean, the bill of lading would not be a clean bill of lading, with the result that the estoppel which could have been set up by the indorsee as against the shipowner if the bill of lading had been a clean bill of lading, and the necessary conditions of estoppel had been satisfied, could not be relied upon. That type of estoppel is of the greatest importance in this common class of commercial transactions: it has been upheld in a long series of authoritative decisions of which Their Lordships need only cite one, *Silver* v. *Ocean Steamship Company Ltd.*, [1930] 1 K.B. 416, where the rules applicable to cases in which bills of lading are dealt with as between shipowners and indorsees or other holders for value, are laid down. But if the statement is qualified as in the opinion of their Lordships and the Judges of the Supreme Court it was, the estoppel fails.

Mr. Devlin has strenuously contended that this result does not here follow because, he argued, the alleged estoppel here is a clear and unambiguous statement on the face of the bill of lading, which governs the whole document and its weight is not counterbalanced by the stamped clause which is not sufficiently precise in negativing the effect of the statement and therefore the estoppel is not destroyed by the stamped clause. But the true rule to be followed is that the bill of lading must be construed as a whole, like any other commercial document. In *Low* v. *Bouverie*, [1891] 3 Ch. 82, Bowen, L.J. at p. 106 in deciding against the estoppel there pleaded said " Now an estoppel, that is to say the language upon which an estoppel is founded, must be precise and unambiguous." Mr. Devlin argued that conversely to defeat a clear and unambiguous estoppel the language relied on for that purpose must be clear and unambiguous and is not so here. But Bowen, L.J., goes on to explain the words he used and to state the true rule:— " That does not necessarily mean that the language must be such that it cannot possibly be open to different constructions, but that it must be such as will be reasonably understood in a particular sense by the person to whom it is addressed." There was perhaps a time when estoppels were described as odious and as such were viewed with suspicion and reluctance. Mr. Devlin has sought to apply the same test to a case where it is sought to qualify words which if unqualified would constitute an estoppel. But in more modern times the law of estoppel has developed and has become recognised as a beneficial branch of law. That great lawyer Sir Frederick Pollock has described the doctrine of estoppel as " a simple and wholly untechnical conception, perhaps the most powerful and flexible instrument to be found in any system of Court jurisprudence." How true that description is can be seen by looking at the collection and analysis of decided English cases on estoppel to be found in Laws of England (Hailsham edition) Vol. XIII pages 397 to 518. A question now of estoppel must be decided on ordinary common law principles of construction and of what is reasonable, without fine distinctions or technicalities. On that basis the language of the bill of lading, read fairly and as a whole, is not, for reasons which their Lordships have already here given, such as to found an estoppel. Their Lordships in so deciding are not in any way weakening the rule that a shipowner who issues a clean bill of lading is bound by the statement in it that the goods are shipped in good or in apparent good order and condition: if the statement turns out to be untrue the shipowner is estopped from alleging its falsity as against a purchaser who relies on the statement at its face value and acts upon it to his detriment. This is a rule which may be applied any day in the case of c.i.f. contracts. To cast doubts upon it, would be to weaken the whole course of dealing between business men in regard to bills of lading in their character of documents of title used in connection with overseas shipments of goods. It is true that the unqualified statement

is only one step in the establishment of the estoppel. Estoppel is a complex legal notion, involving a combination of several essential elements, the statement to be acted upon, action on the faith of it, resulting detriment to the actor. Estoppel is often described as a rule of evidence, as indeed it may be so described. But the whole concept is more correctly viewed as a substantive rule of law. The purchaser or other transferee must have acted upon it to his detriment, as for instance he did in this case when he took up the documents and paid for them. It is also true that he cannot be said to rely on the statement if he knew that it was false: he must reasonably believe it to be true and therefore act upon it. Estoppel is different from contract both in its nature and consequences. But the relationship between the parties must also be such that the imputed truth of the statement is a necessary step in the constitution of the cause of action. But the whole case of estoppel fails if the statement is not sufficiently clear and unqualified. That in their Lordships' judgment is the position in this case. The appeal must therefore fail because there is no ground for holding the respondents guilty of any breach of conduct or duty in regard to the carriage of the goods and indeed no reason to find that the goods were actually damaged on the voyage. The foundations of the whole of the appellants' case is the estoppel which they seek to extract from the language of the bill of lading. That taken with the general relationship between the parties and the fact that the goods were in fact delivered in a damaged condition constitutes the alleged cause of action which they seek to establish. The appellants fail to justify their construction of the bill of lading, and accordingly their claim fails.

This way of approaching the issues makes it unnecessary to consider at length the effect of Clause 27 of the bill of lading. That clause, which is somewhat complicated, seems to recognise the practice of the port of issuing bills of lading before the terms of the ship's receipts are known and stipulates that if the bills of lading are clean (that is not expressly qualified as to condition) but are signed subject to mates' receipts, the bills of lading are to be read as qualified by any notations or clauses in the mate's receipt as if they had been expressed in the bill of lading. If there is any discrepancy between this printed clause and the stamped clause in the margin, the latter on ordinary principles of construction will prevail. Their Lordships think that the case should be decided on the simple language of the stamped clause which overrides Clause 27 if there is any relevant difference in their effect and that in this case Clause 27 may be disregarded in the result.

It is finally necessary to deal shortly with an objection raised on the construction of Article III of the Rules scheduled to the Carriage of Goods by Sea Ordinance. Rule 3 of that article requires that after receiving the goods into his charge the carrier or the master or agent of the carrier shall on demand of the shipper issue to the shipper a bill of lading, showing among other things (c) the apparent order and condition of the goods. Rule 7 provides that after the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier shall if the shipper so demands, be a shipped bill of lading. Rule 3 expressly applies only if the shipper demands a bill of lading showing the apparent order and condition of the goods. There is no evidence that the shipper here made any such demand: indeed no demand of this nature is alleged. The condition of the Rule is thus not fulfilled. In the *Vita Food Products Inc.* v. *Unus Shipping Co.*, [1939] A.C. 277, this Board held that the Rules under an Act in similar terms in force in Newfoundland did not make it imperative for the carrier to issue a bill of lading save on demand of the shipper. There is indeed no law which prevents goods being carried at sea without any bill of lading at all (*Vita Food Products supra* at p. 294) or makes any particular form of bill of lading obligatory. It seems clear that the bill of lading here was what the parties intended and was in no sense unlawful or void. That point fails. Rule 4 of Article III of the Rules scheduled to the Ordinance was referred to in the majority judgment of the Supreme

Court. That Rule reads, "Such a bill of lading shall be *prima facie* evidence of the receipt by the carrier of the goods as therein described in accordance with paragraphs 3 (*a*) (*b*) and (*c*)." The Rule however can have no practical application in this case. The bill of lading, as their Lordships have found, does not describe the goods as being received in apparent good order and condition, and there is no reason under the Rules or otherwise for refusing effect to the bill of lading according to its construction. In any case their Lordships, like the majority Judges of the Supreme Court, do not see any reason to dissent from the view expressed by Scrutton L.J., in *Silver's* case (*supra*) at p. 425 that Rule 4 of Article III has not the effect of allowing the shipowner to prove that goods which he has stated to be in apparent good order and condition on shipment were not really in apparent good order and condition as against people who accepted the bill of lading on the faith of the statement contained in it. It is enough here to say that the bill of lading in this case does not contain any such statement as that to which Scrutton, L.J., refers.

On the whole case their Lordships are of opinion that the appeal should be dismissed. They will humbly so advise His Majesty. The appellants will pay the costs of the appeal.

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